

Senate Study Bill 1068

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON BEHN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the governance of cooperatives.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 1615SC 80
4 da/sh/8

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1 1 Section 1. Section 497.33, Code 2003, is amended to read
1 2 as follows:
1 3 497.33 PERSONAL LIABILITY.
1 4 1. Except as otherwise provided in subsection 2 or as
1 5 otherwise provided in this chapter, all of the following
1 6 apply:
1 7 a. A person who acts in the capacity of a director,
1 8 officer, employee, or member of ~~the corporation~~ an association
1 9 is not ~~personally liable on for the corporation's~~
1 10 association's debts or obligations, and a
1 11 b. A person who acts in the capacity of a director,
1 12 officer, member, or ~~other~~ volunteer of an association is not
1 13 personally liable in that capacity, for a claim based upon an
1 14 act or omission of the person performed in the discharge of
1 15 the person's duties, ~~except for a breach of the duty of~~
1 16 ~~loyalty to the corporation, for acts or omissions not in good~~
1 17 ~~faith or which involve.~~
1 18 2. A person who acts in the capacity of a director,
1 19 officer, employee, member, or volunteer of an association is
1 20 personally liable for any of the following:
1 21 a. The amount of a financial benefit received by the
1 22 person to which the person is not entitled.
1 23 b. The amount of monetary damages suffered by the
1 24 association or its members caused by the person's intentional
1 25 infliction of harm to the association or its members.
1 26 c. The amount of monetary damages suffered by the
1 27 association or its members caused by the person's intentional
1 28 misconduct or knowing violation of the criminal law, ~~or for a~~
1 29 ~~transaction from which the person derives an improper personal~~
1 30 ~~benefit.~~
1 31 Sec. 2. Section 498.35, Code 2003, is amended to read as
1 32 follows:
1 33 498.35 PERSONAL LIABILITY.
1 34 1. Except as otherwise provided in subsection 2 or as
1 35 otherwise provided in this chapter, all of the following
2 1 apply:
2 2 a. A person who acts in the capacity of a director,
2 3 officer, employee, or member of ~~the an~~ association is not
2 4 personally liable on for the association's debts or
2 5 obligations and
2 6 b. A person who acts in the capacity of a director,
2 7 officer, member, or ~~other~~ volunteer is not personally liable
2 8 in that capacity, for a claim based upon an act or omission of
2 9 the person performed in the discharge of the person's duties,
2 10 ~~except for a breach of the duty of loyalty to the association,~~
2 11 ~~for acts or omissions not in good faith or which involve.~~
2 12 2. A person who acts in the capacity of a director,
2 13 officer, employee, member, or volunteer of an association is
2 14 personally liable for any of the following:
2 15 a. The amount of a financial benefit received by the
2 16 person to which the person is not entitled.
2 17 b. The amount of monetary damages suffered by the
2 18 association or its members caused by the person's intentional
2 19 infliction of harm to the association or its members.
2 20 c. The amount of monetary damages suffered by the
2 21 association or its members caused by the person's intentional
2 22 ~~misconduct or knowing violation of the criminal law, or for a~~
2 23 ~~transaction from which the person derives an improper personal~~

2 24 benefit.

2 25 Sec. 3. Section 499.37, Code 2003, is amended to read as

2 26 follows:

2 27 499.37 OFFICERS AND EMPLOYEES.

2 28 1. The board of directors of the association shall select

2 29 from their own number a president, one or more vice

2 30 presidents, a secretary-treasurer or a secretary and a

2 31 treasurer the association's officers as provided in its

2 32 articles of incorporation or bylaws, and shall fill vacancies

2 33 in such offices. The articles of incorporation or bylaws

2 34 shall delegate to an officer the responsibility for all of the

2 35 following:

3 1 a. Preparing minutes of meetings of the directors and the

3 2 shareholders.

3 3 b. Authenticating the association's records.

3 4 2. Unless the association's articles of incorporation or

3 5 bylaws otherwise provide, said the association's officers

3 6 shall be chosen serve for annual terms beginning at the close

3 7 of the first regular meeting of members in each year.

3 8 The directors shall also choose and may remove such other

3 9 officers and employees as they deem proper, or as the articles

3 10 or bylaws may prescribe.

3 11 Sec. 4. Section 499.59, Code 2003, is amended to read as

3 12 follows:

3 13 499.59 PERSONAL LIABILITY.

3 14 1. Except as otherwise provided in subsection 2 or as

3 15 otherwise provided in this chapter, all of the following shall

3 16 apply:

3 17 a. A person who acts in the capacity of a director,

3 18 officer, employee, or member of the association is not

3 19 personally liable on for the association's debts or

3 20 obligations, and a

3 21 b. A person who acts in the capacity of a director,

3 22 officer, member, or other volunteer is not personally liable

3 23 in that capacity, for a claim based upon an act or omission of

3 24 the person performed in the discharge of the person's duties,

3 25 except for a breach of the duty of loyalty to the association,

3 26 for acts or omissions not in good faith or which involve.

3 27 2. A person who acts in the capacity of a director,

3 28 officer, employee, member, or volunteer of an association is

3 29 personally liable for any of the following:

3 30 a. The amount of a financial benefit received by the

3 31 person to which the person is not entitled.

3 32 b. The amount of monetary damages suffered by the

3 33 association or its members caused by the person's intentional

3 34 infliction of harm to the association or its members.

3 35 c. The amount of monetary damages suffered by the

4 1 association or its members caused by the person's intentional

4 2 misconduct or knowing violation of the criminal law, or for a

4 3 transaction from which the person derives an improper personal

4 4 benefit.

4 5 Sec. 5. Section 501.407, Code 2003, is amended to read as

4 6 follows:

4 7 501.407 PERSONAL LIABILITY.

4 8 The articles may contain a provision eliminating or

4 9 limiting the personal liability of a person acting in the

4 10 capacity of a director, officer, or interest holder of the

4 11 cooperative for monetary damages for breach of a fiduciary

4 12 duty as a director, officer, or interest holder, provided that

4 13 the provision does not eliminate or limit liability. However,

4 14 a person who acts in that capacity is personally liable for

4 15 any of the following:

4 16 1. A breach of the duty of loyalty to the cooperative or

4 17 its interest holders. The amount of financial benefit received

4 18 by the person to which the person is not entitled.

4 19 2. An act or omission not in good faith or which involves

4 20 intentional misconduct or a knowing violation of law. The

4 21 amount of monetary damages to the cooperative or its interest

4 22 holders caused by the person's intentional infliction of harm

4 23 to the cooperative or its interest holders.

4 24 3. A transaction from which the director, officer, or

4 25 interest holder derives an improper personal benefit. The

4 26 amount of monetary damages to the association or its interest

4 27 holders caused by the person's intentional violation of

4 28 criminal law.

4 29 4. An The amount of monetary damages to the cooperative or

4 30 its interest holders caused by the person's act or omission

4 31 occurring prior to the date when the provision in the articles

4 32 becomes effective.

4 33 EXPLANATION

4 34 This bill provides for the governance of cooperatives.

4 35 Code chapters 497, 498, and 499 have traditionally governed
5 1 the organization and management of cooperatives (most commonly
5 2 referred to as "associations"). Code chapter 499 is
5 3 considered the modern cooperative chapter. The fourth type of
5 4 cooperative structure was established in 1996 and codified in
5 5 Code chapter 501 for purposes relating to value-added
5 6 agricultural production by producers.
5 7 The bill amends provisions in all four Code chapters
5 8 governing the liability of persons acting in the capacity of a
5 9 director, officer, or interest holder of a cooperative.
5 10 Generally, a person acting on behalf of the cooperative is not
5 11 held personally liable for actions of the cooperative. Under
5 12 current law, there are several exceptions. Such a person may
5 13 be personally liable for an act or omission that represents a
5 14 breach of the duty of loyalty to the cooperative, is not in
5 15 good faith, is intentional misconduct, or is a knowing
5 16 violation of the law. The bill changes those standards to
5 17 provide that personal liability attaches when the person
5 18 receives an unwarranted financial benefit, intentionally
5 19 inflicts harm to the cooperative, or commits a criminal
5 20 violation.
5 21 The bill also eliminates a provision in Code chapter 499
5 22 which provides for the selection of a president and other
5 23 officers by an association's board of directors. The bill
5 24 provides that the cooperative's articles of incorporation or
5 25 bylaws may delegate to an officer responsibility for preparing
5 26 minutes and authenticating records. It also eliminates a
5 27 provision for the removal of officers and employees.
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